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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/807,883	03/24/2004	Paul Gait	N1055	5602

23456 7590 04/23/2007
WADDEY & PATTERSON, P.C.
1600 DIVISION STREET, SUITE 500
NASHVILLE, TN 37203

EXAMINER

CHAMBERS, MICHAEL S

ART UNIT	PAPER NUMBER
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3711

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	04/23/2007	PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

Office Action Summary	Application No. 10/807,883	Applicant(s) GAIT, PAUL	
	Examiner Mike Chambers	Art Unit 3711	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 20 February 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 15-24 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 15-24 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 15-24 are rejected under 35 U.S.C. 102(b) as being anticipated by or , in the alternative, under 35 U.S.C. 103(a) as obvious over Morrow et al (20020173388). Morrow discloses a throat for receiving a handle; a scoop distal from the throat; a pair of sidewalls extending from the throat to the scoop, each sidewall having an inner edge, an outer edge, a length, an upper portion, a middle portion below the upper portion, and a lower portion below the middle portion, the pair of sidewalls separated by a distance; and wherein a portion of the length of the inner edge of each sidewall convexes inwardly toward the opposing sidewall and said portion of the length of the inner edge of each sidewall is convex toward the opposing sidewall from the upper portion to the middle portion and from the lower portion to the middle portion (fig 3, paragraph 27-last 3 sentences). It would have been obvious to one of ordinary skill in

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the art at the time of the invention to have selected any one of several equivalent sidewall designs including a convex sidewall based on cost, design and marketing considerations. The specification provides no unexpected or surprising results in using a convex sidewall as claimed.

As to claim 16 : Morrow discloses curved sidewalls (fig 3).

As to claim 17 : Morrow discloses varying curvature along the length of the sidewalls (fig 3, paragraph 27,28).

As to claim 18 : Morrow discloses an upper portion larger than a middle portion (fig 3).

As to claim 19 : Morrow discloses an lower portion larger than a middle portion (fig 3).

As to claim 20 : Morrow discloses a distance greater at the upper portion than the middle portion (fig 3, paragraph 27,28,31).

As to claim 21 : Morrow discloses a distance greater at the lower portion than the middle portion (fig 3). A convex shaped cross section would naturally have a distance greater at the lower portion than the middle portion

As to claim 22 : See claim 15 rejection.

As to claim 23 : See claim 15 rejection.

As to claim 24 : See claim 15 rejection.

Response to Arguments

Applicant's arguments filed 2/20/07 have been fully considered but they are not persuasive. The existing claim language clearly reads on the cited art. The applicant's argument appears to focus on the recessed ridge (38). The simple fact is that item 38 is

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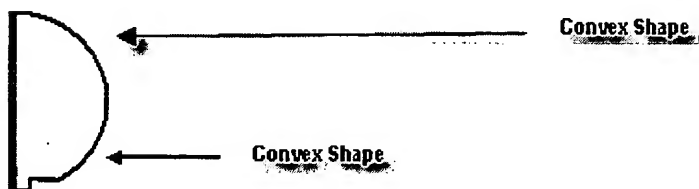
not the main thrust of the invention in application 20020173388. As noted in the current response listing Paragraph 27 of the specification:

"Each inner surface 39, 41 is preferably configured to extend in a generally continuous fashion from the top surface 42 of the recessed channel 38 to the upper rim 34. In the preferred embodiment, this configuration is generally curved or arcuate. However, it will be understood that the inner surface 39, 41 of each sidewall may alternatively be sloped, inclined, convex, stepped, or any combination of the above. Moreover, different portions of a single sidewall can take on a variety of different shapes. (Emphasis added) (Paragraph 27, last 5 sentences)"

It clearly states that the sidewall can be convex. The limitations of the existing claim language in the instant invention merely calls for

"a portion of the length of the inner edge of each sidewall convexes inwardly toward the opposing sidewall and said portion of the length of the inner edge of each sidewall is convex toward the opposing sidewall from the upper portion to the middle portion and is convex toward the opposing sidewall from the lower portion to the middle portion"

In the simplest form, the sidewall of Morrow could be shaped like this:



Conclusion

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Mike Chambers whose telephone number is 571-272-4407. The examiner can normally be reached on Mon-Fri 8:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Gene Kim can be reached on 571-272-4463. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

20020173388*

April 11, 2007

Michael Chambers
Examiner
Art Unit 3711



EUGENE KIM
SUPERVISORY PATENT EXAMINER